IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 1464 OF 2006

IN

SECOND APPEAL NO. 954 OF 2006

IN

SECOND APPEAL NO. 687 OF 1997

Office Notes, Office Memoranda of Coram, appearances, Court's Orders or directions and Registrar's Orders	Court's or Judge's Orders

Ms. Deepa Matwandkar h/f. J.N. Pawar for the appellants.

G.V. Mhatre for the respondents.

CORAM: S.B. DESHMUKH, J.

September 28, 2006.

P.C. :

1. Heard the learned counsel for the parties.

2. Learned counsel appearing for the applicant submits that Second Appeal No. 687 of 1997 was admitted by this court. Interim relief was also granted in favour

of the applicant. Second Appeal No. 687 of 1997 was listed for final hearing on 16.12.2005. The learned counsel for the applicant as well as the applicant was not present and therefore Second Appeal No. 687 was dismissed by this court on December 16, 2005. The applicants thereafter has filed Civil Application 954 of 2006 in this court. In this Civil Application No. 954 of 2006, ad-interim relief was granted by this court on June 23, 2006 in terms of prayer clause (b) upto 14.7.2006. This ad-interim relief was continued till 28.7.2006. On 28.7.2006 none appeared for the applicants and therefore Civil Application NO. 954 of 2006, was dismissed by this court.

3. The learned counsel for the respondent has filed reply affidavit. According to him decree is virtually executed. The extension of time to

vacate the suit property till 31.10.2006 is granted in favour of the applicants, by the respondents. According to him, there is no just and sufficient reason, set out in the Civil Application for restoration of the Civil Application No. 954 of 2006.

4. Per-contra, the learned counsel for the applicants has invited my attention to paragraph 6 of the Civil Application. According to her the execution petition pending before the executing court was listed on 28.6.2006 and was adjourned to September 29, 2006. However, since the Civil Application No. 954 of 2006, was dismissed on 28.7.2006 the executing court without giving notice to the applicants or their advocate preponed the date and issued possession of warrant on 17.8.2006. The process server tried to execute the warrant and the applicant no.2 gave in writing that

he will vacate the premises on or before 31.10.2006. According to the applicant their absence on 28.7.2006 is not deliberate or intentional. In paragraph 5 it is stated that on 28.7.2006 this Civil Application No. 954 of 2006 was at Serial No.22 before this court. However, through over sight, the advocate for the applicants did not mark the matter and remained absent when it was called out. Undisputedly, Second Appeal was admitted by this court and even in Civil Application No. 954 of 2006, interim protection was granted in favour of the applicant which was in operation till 28.7.2006. There is a lapse on the part of the applicants regarding attending the matter. Such lapse seems to be on two occasions. First on 16.12.2005 and second on 28.7.2006. However, considering the facts and circumstances, in the interest of justice, in my view the reason assigned in paragraph 5 and 6,

can be considered to be a just and sufficient reasons. However inconvenience caused to the respondents needs to be taken care of. In this view of the matter, Civil Application is partly allowed. Civil Application No. 954 of 2006 is restored to the file of this court, with the same position as on the date of dismissal. The applicants are directed to make the payment of cost of Rs.2,000/- to the respondents. This payment to be made within a period of 2 weeks from today to the learned counsel appearing for the respondents who has to pass the receipt thereof. Civil Application is accordingly partly allowed and disposed off in above terms. List the Civil Application No. 954 of 2006 for admission after three weeks.

5. It is made clear that this Civil Application to be restored to its position as on 28.7.2006 protecting the

interest of the applicant by way of interim relief granted by this court earlier.

sd/-

(JUDGE)